IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RUTH K. ATKINSON,)	
)	
Plaintiff,)	
)	
v.)	1:07CV586
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

On August 6, 2007, Plaintiff Ruth K. Atkinson filed this action, *pro se*, for review of the denial of her application for disability under the Social Security Act. On October 16, 2007, the Commissioner of Social Security filed answer. In accordance with the procedures used by this Court for adjudication of Social Security cases, the parties were notified by the Clerk that this action would proceed by motions, and that Plaintiff must file a motion for judgment within 45 days of October 17, 2007. Thereafter, according to the Clerk's notice, the Commissioner must file his motion for judgment within 60 days. *See* Docket No. 8, Clerk's Letter of October 17, 2007.

On November 29, 2007, *pro se* Plaintiff Atkinson sent a letter to the Clerk advising that she was preparing for a Chapter 13 bankruptcy. She said she had no money, and she listed the medications she was taking. She asked for another hearing before an

Administrative Law Judge. The Clerk responded by advising Plaintiff that the Clerk could

not furnish legal advice and advising her that she must comply with the federal rules in

presenting any pleading to the court. On February 5, 2008, Defendant moved to dismiss the

action for Plaintiff's failure to prosecute this action by filing a dispositive motion in

accordance with the Clerk's letter of October 17, 2007. On August 5, 2008, Plaintiff was

advised of her opportunity to respond to the motion to dismiss and of the fact that the motion

could be granted if she failed to respond. Plaintiff filed no response.

Defendant's motion to dismiss for lack of prosecution is before the Court and is

unopposed by Plaintiff. On review, and for reasons stated by Defendant in its Memorandum

of Law (Docket No. 11), the undersigned finds and concludes that the motion to dismiss

should be granted. Plaintiff has not responded to the motion to dismiss despite its pendency

for more than a year. Plaintiff has not prosecuted this action in accordance with the federal

rules or the instructions of this court.

Accordingly, **IT IS RECOMMENDED** that this action be dismissed for lack of

prosecution pursuant to Rule 41(b).

/s/ P. Trevor Sharp

United States Magistrate Judge

Date: May 13, 2009

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